

IN THE CIRCUIT COURT OF JACKSON COUNTY  
AT KANSAS CITY

STATE OF MISSOURI, ex rel.	)	
JEREMIAH W. (JAY) NIXON,	)	
Attorney General,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. _____
	)	
HARRIET ANN JONES, d/b/a Nu Body,	)	
Weight Management & Image	)	
Service,	)	
[service address: 3606 E. 61 <sup>st</sup> St.	)	
Kansas City, MO 64130],	)	
	)	
Defendant.	)	

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**PETITION FOR INJUNCTIVE RELIEF,  
CIVIL PENALTIES, RESTITUTION, AND COSTS**

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Plaintiff, the State of Missouri, pursuant to RSMo §§ 407.020, *et. seq.*, by and through its Attorney General and designated assistants, states and alleges the following:

1. Jeremiah W. (Jay) Nixon is the duly elected and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to RSMo §§ 407.100.

2. Defendant Harriet Ann Jones, d/b/a Nu Body, Weight Management & Image Service, is an individual residing at 3606 E. 61<sup>st</sup> St., Kansas City, Missouri 64130, who registered the name “Nu Body, Weight Management & Image Service” (“Nu Body”) as a fictitious business name with the Missouri Secretary of State in December 2002, and

thereafter operated Nu Body in Jackson County using a business address of 7329 Broadway, Kansas City, Missouri 64114.

3. Defendant directed, controlled, and participated in the acts and omissions referred to herein in the furtherance of her scheme to defraud consumers through the operation of Nu Body.

4. This Court has jurisdiction pursuant to § 407.100, RSMo 2000, which allows the Attorney General to seek legal and equitable relief in this Court for violations of Chapter 407.

5. Venue is proper in this Court under § 407.100, in that violations of § 407.020 as described herein occurred in Kansas City, Jackson County, Missouri.

6. Section 407.020 provides in pertinent part:

The act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in Section 407.453, in or from the State of Missouri, is declared to be an unlawful practice.

7. Section 407.010 defines “merchandise” as “any objects, wares, goods, commodities, intangibles, real estate or services.”

8. Pursuant to the authority granted by § 407.145, the Attorney General has promulgated rules explaining and defining terms used in § 407.020, which rules are contained in the Code of State Regulations and include the following:

- a. 15 CSR 60-9.070 provides that:
  - (1) A misrepresentation is an assertion that is not in accord with the facts.
  - (2) Reliance, knowledge that the assertion is false or misleading, intent to defraud, intent that the consumer rely upon the assertion, or any other culpable mental state such as recklessness or negligence, are not elements of misrepresentation as used in section 407.020.1, RSMo.
- b. 15 CSR 60-9.010 defines "assertion" as follows:

Assertion may be words, conduct or pictorial depiction, and may convey past or present fact, law, value, opinion, intention or other state of mind.
- c. 15 CSR 60-9-110 provides that:
  - (1) Concealment of a material fact is any method, act, use or practice which operates to hide or keep material facts from consumers.

\* \* \*
  - (3) Omission of a material fact is any failure by a person to disclose material facts known to him/her, or upon reasonable inquiry would be known to him/her.
  - (4) Reliance and intent that others rely upon such concealment, suppression or omission are not elements of concealment, suppression or omission as used in section 407.020.1, RSMo.
- d. 15 CSR 60-9.020 provides that:
  - (1) Deception is any method, act, use, practice, advertisement or solicitation that has the tendency or capacity to mislead, deceive or cheat, or that tends to create a false impression.
  - (2) Reliance, actual deception, knowledge of deception, intent to mislead or deceive or any other culpable mental state such as recklessness or negligence, are not elements of deception as used in section 407.020.1., RSMo. . . . Deception may occur in securing the first contact with a consumer and is not

cured even though the true facts or nature of the advertisement or offer for sale are subsequently disclosed.

9. Defendant's activities as described herein constitute the sale or advertisement of merchandise in trade or commerce in the State of Missouri as those terms are defined and used in §§ 407.010 and 407.020.

10. During the time period December 2002 through at least April 2004, defendant operated the business known as Nu Body in Jackson County, Missouri, as follows:

- a. Defendant solicited Missouri consumers to pay up-front "set-up" fees, in amounts ranging from \$10 to \$50, to register as "independent direct mail processors" for "advertising campaigns" on behalf of Nu Body.
- b. Defendant represented to these consumers that Nu Body was in the business of selling to the general public a variety of weight loss programs and "cutting edge technology" to stimulate weight loss and otherwise improve mental and physical health and physical appearance.
- c. Defendant represented to these consumers that, in return for their registration and payment of set-up fees, she would provide them with "mailing kits" containing promotional materials to use in direct-mail "advertising campaigns" on behalf of Nu Body.

- d. Defendant represented to consumers that she would send the mailing kits to consumers twenty-one days after the consumer had submitted a registration agreement and paid set-up fees to defendant.
- e. Defendant represented to consumers that, depending on the amount the consumer paid up-front, and if the consumer mailed out the required number of the promotional materials to potential customers of Nu Body, consumers would earn hundreds, even thousands, of dollars over the course of a six- or eight-week period, which defendant would pay “the following Saturday” after the work was done.
- f. Defendant also represented to consumers that, if they referred others to the program within three days of their own registration, she would pay them a “bonus” referral fee, thus encouraging consumers to recommend the program to others based solely on defendant’s initial representations, and without the opportunity to see if defendant would honor her representations.

11. During the time period beginning approximately February 2004 and continuing through April 2004, defendant solicited at least forty Missouri consumers to register and pay up-front fees by using the merchandising practices described in the preceding paragraph.

12. Based on complaints received by the Attorney General's Office from consumers, defendant provided the "mailing kits" to only three consumers. Two of these consumers had registered on or before March 12, 2004, and both completed the assigned work of direct-mailing the promotional materials to potential customers of Nu Body and so informed defendant, but defendant never paid either consumer for the work done. The third consumer received materials and is the only consumer known to have received a check from defendant, in the amount of \$47, for work done. On the consumer's first attempt to negotiate the check, it was returned for insufficient funds; the second attempt failed because defendant had closed her checking account.

13. As for all other consumers who registered for defendant's "advertising campaign" from March 2 to at least April 18, 2004, defendant kept their set-up fees, never provided "mailing kits" or any other materials, did not pay the amounts she had represented they would earn under the program, and paid no referral fees although many consumers came to the program as referrals. In response to consumer complaints, which defendant began to receive as early as March 2004, defendant promised to make full refunds, even stating to some consumers that "refunds are being processed."

14. Defendant, however, continued to solicit and accept money from Missouri consumers to participate in her "advertising campaigns" during March and April 2004, using the same representations as before, but without disclosing her failure to honor those representations made to previous consumers and with the knowledge that she had failed

to honor those representations previously, that consumers had therefore complained and expected refunds because she had promised to make them, and that she had not made the promised refunds.

15. At some later point in the spring of 2004, defendant notified consumers that (1) she was discontinuing the above-described mailing program, (2) she was “restructuring” a new program that would take at least three to four weeks, and (3) she would pay refunds to consumers who wanted them, but that consumers could elect instead to participate in the new program defendant was planning.

16. Although most if not all consumers informed defendant that they wanted refunds rather than to participate in a new program, defendant failed to pay refunds. Defendant stopped responding to consumer complaints and closed her business without ever restructuring the program.

17. Before, during, and after defendant advertised, marketed, and sold the Nu Body merchandise to Missouri consumers, she engaged in deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact, all declared to be unlawful under § 407.020, in the following respects, among others:

- a. Misrepresenting and making the false promise to consumers that defendant would provide “mailing kits” to consumers upon their registration and payment of set-up fees;

- b. Misrepresenting and making the false promise to consumers that they could earn hundreds or even thousands of dollars over a 6- to 8-week period if they registered and paid defendant the set-up fees;
- c. Misrepresenting and making the false promise to consumers that defendant would pay a referral fee for others who registered for the Nu Body program as a result of consumers' referrals;
- d. Misrepresenting and making the false promise to consumers that defendant would refund money paid by dissatisfied consumers, and further representing to consumers that refunds were "being processed."

WHEREFORE, the Attorney General prays this Court for the following relief:

- A. A judgment that defendant has violated RSMo §§ 407.020, as alleged herein.
- B. A permanent injunction enjoining defendant, her legal representatives, agents, employees, or any other persons acting at their direction or on her behalf from using any of the methods, acts, uses, and practices that violate § 407.020, including but not limited to all such methods, acts, uses, and practices described herein and particularly including engaging in any sale or offer of sale that involves business opportunities or requires advance payment by consumers.



C. A judgment finding defendant liable to make restitution payable to the State of Missouri pursuant to RSMo § 407.100.4, as may be necessary to restore any person who has suffered any ascertainable loss as a result of defendant's unlawful conduct described herein.

D. A judgment finding defendant liable for civil penalties under RSMo § 407.100.6 in the amount of One Thousand Dollars (\$1,000.00) for each and every violation of RSMo §§ 407.020.

F. A judgment finding defendant liable for payment to the Missouri Merchandising Practices Revolving Fund, pursuant to RSMo § 407.140.3.

G. A judgment finding defendant liable for the costs of this action, including the costs of the Attorney General's investigation and reasonable attorneys' fees, pursuant to RSMo §§ 407.130.

H. Such further relief as the Court deems just and equitable.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON  
Attorney General

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